



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.06.2019
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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CMA (MD) No.1601 of 2013

Pitchaimani

... Appellant/Petitioner

vs.

1) S.Ashok Kumar

2) M/s. National Insurance Co.Ltd.,
Represented by its Divisional Manager,
Divisional Office,
No.3, North Veli Street,
Madurai-625 001.

... Respondents/Respondent

Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP.No.1864 of 2007 dated 14.06.2012 by the learned VI Additional District Court, (Motor Accidents Claims Tribunal), Madurai, and prays to set aside the quantum of award concerned and enhance the award amount of Rs.47,200/- to that of Rs.1,50,000/- as original claim in the above MCOP.No.1864 of 2007.

For Appellant	: Mr.A.Theethar
For R1	: No appearance
For R2	: Mr.D.Sivaraman

JUDGMENT

Challenging the quantum of compensation, the claimant has filed this appeal for enhancement.

2.Learned counsel for the appellant would contend that though the appellant/claimant sustained fracture of both bones in the left leg and multiple grievous injuries all over the body and PW3-Doctor has issued Ex.P4-Disability Certificate stating that the appellant has sustained 33.6% partial permanent disability, the Tribunal erroneously reducing the same, has fixed the percentage of disability at 26% and awarded Rs.26,000/- towards disability compensation and therefore he would state that the learned Judge ought not to have reduced the percentage of disability without any reasons and prayed for fixing Rs.2,000/- for each percentage of disability. Further, according to him, the consolidated award of Rs.5,000/- towards pain and suffering, transportation and extra nourishment is extremely on the lower side and prayed for enhancement.



3. Heard both sides and perused the records.

4. Perusal of record shows that the appellant/claimant sustained fracture of both bones in the left leg and multiple grievous injuries all over the body. PW3-Doctor has issued Ex.P4-Disability Certificate stating that the appellant has sustained 33.6% partial permanent disability, but the Tribunal observing that the claimant has not suffered any serious disability, reduced the percentage of disability to 26% and awarded Rs.1,000/- for each percentage of disability. It is well settled that the opinion of experts cannot be found fault with unless evidence contrary thereto is adduced to disprove the same. In this case, no such rebuttal evidence let in to disprove the disability percentage and therefore, the percentage of disability is fixed at 33.6% as assessed by PW3-Doctor and as per the judgment in **Prahalath Jasmathiya v. V.Sankaran** reported in **2009 (5) MLJ 1549**, a sum of Rs.2,000/- is hereby awarded for each percentage of disability. Accordingly, the award of Rs.26,000/- towards disability compensation is enhanced to Rs.67,200/-. A sum of Rs.5,000/- awarded for pain and suffering, transportation and extra nourishment is grossly inadequate and therefore, a sum of Rs.15,000/- for extra nourishment; Rs.25,000/- towards pain and suffering and Rs.10,000/- for transportation are hereby awarded. Accordingly, the total compensation is calculated as follows:-

Partial permanent disability	=	Rs. 67,200/-
Pain and suffering	=	Rs. 25,000/-
Extra nourishment	=	Rs. 15,000/-
Transportation	=	Rs. 10,000/-
Medical expenses	=	Rs. 25,000/-
Loss of income during treatment	=	Rs. 1,200/-

Total	=	Rs. 1,43,400/-
(Less) Amount awarded by the Tribunal	=	Rs. 47,200/-

Enhanced compensation	=	Rs. 96,200/-

5. In the result, the appellant/claimant is entitled to enhanced compensation of Rs.96,200/- over and above the compensation of Rs.47,200/- awarded by the Tribunal. The 2nd respondent insurance company is directed to deposit Rs.1,43,400/- with 7.5% interest per annum from the date of claim petition till the date deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the same without filing formal permission petition before the Tribunal.



With the above direction, this Civil Miscellaneous Appeal is partly allowed. No costs.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

The VI Additional District Judge, Motor Accidents Claims Tribunal,
Madurai.

Copy to :

The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1cc to Mr.A.THEETHAR, Advocate, SR.No.68359

+1cc to Mr.D.SIVARAMAN, Advocate, SR.No.68245

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NA (26.07.2019) 3P :6C